88-1419

Supreme Court, U.S.
FILED
FEB 24 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

RICHARD LAFFERTY

Petitioner,

vs.

ALYESKA PIPELINE SERVICE COMPANY,
FLUOR ALASKA, INC.
and NANA SECURITIES, or
JOHN DOE 1,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

Richard Lafferty
208 N.W. 4th Ave.
Gainesville, FL 32601

QUESTIONS PRESENTED

1. Lafferty's complaint was dismissed without notice and without hearing and without opportunity to defend.

2. Lafferty was denied the equal protection of the laws by the appellate court and the lower court.

3. Lafferty was deprived of property without due process of law by the appellate court and the lower court.

LIST OF PARTIES

All parties to this action are stated in the caption.

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There is no report of the opinion below.

GROUNDS FOR JURISDICTION

The denial of due process of law, the denial of the equal protection of the laws, and the taking of property without due process of law.

Date of judgment: November 9, 1988.

Date of denial of petition for rehearing: November 30, 1988.

Jurisdiction is founded on sections one and two of article three of the United States Constitution, and also on amendments five and fourteen of that Constitution, and also on section 1257(3) of the United States Code, chapter twenty eight.

CONSTITUTIONAL PROVISIONS

1. Fifth Amend., U.S. Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. Fourteenth Amend., U.S. Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. Art. 1, Sec. 1, Alaska Constitution:

Inherent rights. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

4. Art. 1, Sec. 7, Alaska Constitution:

Due process. No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

5. Art. 1, Sec. 16, Alaska Constitution:

Civil suits; trial by jury. In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law. The legislature may make provision for a verdict by not less than three-fourths of the jury and, in courts not of record, may provide for a jury of not less than six or more than twelve.

STATUTORY PROVISIONS

Chapter 28 U.S.C. Section 1257(3):

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court.

(3) By writ of *certiorari*, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

SYNOPSIS OF CASE

Defendant attorney for Alyeska Pipeline Service Co. (Alyeska) posited a fictitious trial as a bar to the original complaint and by means of this tactic was successful in having the complaint dismissed.

When plaintiff Lafferty filed a 60b motion to have this judgment set aside on the basis of fraud upon the court, Alyeska hired new defendant attorneys to defend the original defendant attorney from the charges. These new attorneys defended on the basis that the original defendant attorney had acted in good faith when positing the fictitious trial, and, on appeal, the appellate court affirmed on the basis that the original attorney indeed had acted in good faith. The rationale was that at the time the original defendant attorney had posited the fictitious trial he had in good faith believed the trial existed and that he had made a good faith presentation to the judge. These defendant attorneys used this same good faith argument in persuading the Supreme Court to deny *certiorari*, and, they were successful.

Not known to the appellate court or to the Supreme Court or to plaintiff Lafferty was that the defendants were withholding from the court material and pertinent evidence which completely destroyed the good faith defense.

Knowing that the decision of the appellate court could not be sustained in light of the newly discovered evidence that the defendants had withheld material and pertinent evidence from the appellate court and had represented to that court the opposite of what that evidence would have shown, making impossible the finding that the original defendant attorney had acted in good faith, plaintiff Lafferty petitioned the appellate court for a bill of review to have them review their own previous decision in the matter.

Without stating why, the Chief Justice of the court dismissed the petition without prejudice to the filing of an appropriate action in the superior court. This plaintiff Lafferty did, filing an independent action, and incorporating as an integral part of that complaint, the very same petition for leave to file a bill of review that he had filed in the appellate court.

Without noticing Lafferty to submit pleadings beyond the complaint, the lower court dismissed the complaint with prejudice on a 12b6 motion submitted by defendants.

Lafferty appealed this dismissal as a violation of due process because there was no notice and there was no hearing, and because the judge dismissed the complaint because no pleading in opposition had been submitted to the motion to dismiss, and such pleading is not permissable under the Alaska Rules without special order of the judge and the judge made no such order. Nor did the judge give notice that he was planning to make a decision in a manner not provided by the rules.

The appellate court affirmed the judge below, and thus, I, Lafferty, am now making this petition for *certiorari*.

The above is the essence of the pleadings germane to this petition.

Previous to discovering that defendants had withheld evidence from the court, Lafferty did attempt to file a subsequent action in both the federal court and in the state court. In both attempts he failed and in both attempts he did not directly attack the validity of the decision of the appellate court, but rather filed these subsequent actions on different legal theories, one of which was that, a complaint dismissed on the basis of a fictitious trial that is later admitted to be fictitious cannot be on the merits, as there can be no decision based on the merits of a trial that does not exist.

Petitioner Lafferty raised the question of due process in his brief to the appellate court.

The second paragraph of his conclusion in his brief to that court, page 36, reads as follows:

"The court may not *sua sponte* decide to dispense with the required hearing on a Rule 12(b)(6) motion without noticing the plaintiff and then proceed to make a determination on the motion to dismiss, as such dismissal is a denial of due process."

The appellate court affirmed the lower court in dismissing the complaint without notice and without hearing and without opportunity to defend.

Petitioner Lafferty also raised the issue of due process of law in his petition for rehearing.

The appellate court denied the petition for rehearing.

DENIAL OF DUE PROCESS OF LAW
(First reason for granting the writ)

Lafferty's complaint was dismissed without notice, without hearing, and without opportunity to defend.

Defendant Alyeska had moved for dismissal on a Rule 12b6 motion and by the terms of the Alaska Rules Lafferty was prohibited from submitting a pleading in opposition to the motion. Neither Lafferty nor the defendant moved to bring on the motion for hearing before trial and, because of this, Lafferty expected to defend from the motion at trial.

Instead of this, the judge decided to decide the issue before trial even though there was no motion by either party to do so; and the judge did not inform either party that he was planning to decide the issue before trial. The judge made no order to submit an answer to the 12b6 motion and Lafferty could not submit an answer to the 12b6 motion without order of the judge, as to do so was prohibited by the Alaska Rules.

Thus Lafferty had no opportunity to defend, and absence of such opportunity is denial of due process of law.

DENIAL OF EQUAL PROTECTION OF THE LAWS
(Second reason for granting the writ)

No fair-minded and reasonable man could say the result would have been the same if the position of the parties had been reversed, so that Alyeska were the complainant and Lafferty were the defendant.

1. The appellate court refused to allow Lafferty to ask the judge why he had dismissed the complaint.

2. The appellate court gave implicit approval to the question that Lafferty specifically stated he would be presenting for review, but once Lafferty's brief was in, they withdrew that approval.

3. The appellate court looked with favor on the lower court dismissing Lafferty's complaint without hearing and without giving Lafferty opportunity to defend.

4. The appellate court denied Lafferty's request to be given time to secure the services of a professional attorney before passing judgment on the case, so Lafferty might have opportunity to avoid what Lafferty believed to be an institutional hostility to *pro se* litigants by the Alaska Court System.

5. The appellate court denied Lafferty's motion to strike Alyeska's brief.

6. The appellate court denied Lafferty's motion to be given time and space to brief the issue of *res judicata*.

7. The appellate court denied Lafferty's petition for rehearing.

By the nature of the result on these seven issues it demonstrates unequal treatment.

Lafferty raised the issue of unequal treatment in his letter to Chief Justice Rabinowitz dated December 31, 1987 and in his letter to Chief Justice Matthews dated September 29, 1988.

TAKING OF PROPERTY WITHOUT DUE PROCESS (Third reason for granting the writ)

Lafferty has paid to the defendants over $5,000 in attorney fees and in his complaint he requested that these fees be returned.

Since the expectation of having these attorney fees returned was a reasonable expectation and since his complaint was dismissed without notice or hearing or opportunity to defend, it amounts to taking property without due process.

Additionally, the appellate court itself assessed on Lafferty an additional $750 in attorney fees which, considering they affirmed a dismissal in which neither notice or hearing or opportunity to defend was given to Lafferty, the assessing

of these attorney fees on Lafferty amounts to taking Lafferty's money without due process.

Lafferty also had property in the case itself and to affirm an unconstitutional dismissal in which there is no notice or hearing or opportunity to defend is to take this property from him without due process of law.

CONCLUSION

The complaint was dismissed without notice and without hearing and without opportunity to defend.

Notice and hearing and opportunity to defend are the essence of due process.

The constitutions of Alaska and the United States mandate that no one be deprived of life, liberty, or property, without due process of law.

The constitutions of Alaska and the United States do not say it's OK if one or two people are deprived of due process; on the contrary, it is clear by the wording of these constitutions that the guarantee of due process reaches to and applies to everyone.

Where a person has been deprived of due process it is reviewable. And it is unthinkable that it not be reviewed, otherwise the due process goes unenforced.

APPENDIX

THE SUPREME COURT OF THE STATE OF ALASKA

RICHARD LAFFERTY, *Appellant*,	SUPREME COURT NO. S-2403
v.	NO. 429
ALYESKA PIPELINE SERVICE COMPANY, et al., *Appellees*.	NOVEMBER 9, 1988

Entered pursuant to Appellate Rule 214.

Appeal from the Superior Court of the State of Alaska, 3rd Judicial District Anchorage, Douglas J. Serdahely, Judge.

Appearances: Richard Lafferty, *Pro Se*, Gainesville, Florida, for Appellant. Robert I. Shoaf, Lawrence R. Trotter, Anchorage, for Appellees.

Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton and Moore, Justices.

MEMORANDUM OPINION AND JUDGMENT

I. FACTS AND PROCEEDINGS

This is Mr. Lafferty's third appeal to this court on the same issue. Originally, Lafferty sued Alyeska Pipeline Service Company alleging invasion of privacy, trespass to chattels, false imprisonment and defamation. Judge Victor D. Carlson granted Alyeska's summary judgment motion on all counts and dismissed Lafferty's claim with prejudice. Lafferty did not appeal this judgment.

Seventeen months later, Lafferty moved to set aside the dismissal pursuant to Civil Rule 60(b)(6) alleging that counsel

for Alyeska had committed a fraud upon the court. Judge Carlson denied the motion in July of 1982. This court affirmed that decision in *Lafferty v. Alyeska* Pipeline Service Co., MO&J No. 32 (AK, June 15, 1983). The United States Supreme Court subsequently denied Lafferty's writ of *certiorari*.

In June 1984, Lafferty again sued Alyeska, this time in U.S. District Ct., alleging essentially the same causes of action. Judge Fitzgerald dismissed Lafferty's claim on the grounds of *res judicata*. The Ninth Circuit affirmed.

Lafferty then re-filed his case in the state court essentially alleging the same causes of action as his first two suits. Judge Joan M. Katz dismissed Lafferty's complaint on the grounds of *res judicata* and the statute of limitations. On April 29, 1987, we issued a short Memorandum Opinion & Judgment summarily affirming Judge Katz' dismissal of Lafferty's claims. *Lafferty v. Alyeska Pipeline Service Co.*, MO&J No. 337 (AK, Apr. 29, 1987).

On June 30, 1987, Lafferty filed a new complaint which he deemed an independent action. The new complaint raised the same issues and sought the same relief as the earlier filings, i.e., vacation of the 1977 judgment because of an alleged fraud on the court. However, the new claim purports to be based on newly-discovered evidence constituting the "smoking gun" as to the fraud claim.[1]

Alyeska moved to dismiss the action based upon *res judicata*, asserting that the complaint was duplicative of those previously filed and dismissed on prior occasions. Lafferty did not oppose Alyeska's motion. On August 26, 1987, the court granted the motion and dismissed Lafferty's complaint with prejudice. Lafferty appeals.

II. ANALYSIS

Lafferty asserts that it was error for the court to dismiss his complaint under Civil Rule 12(b) because he did not submit a pleading in opposition to the defendant's motion. However, there is no reason to believe that Judge Serdahely dismissed Lafferty's complaint for this reason.

Lafferty's complaint was properly dismissed on the merits because his present complaint is the same as his prior complaints and it must be dismissed for the same reason, *res judicata*. His alleged "smoking gun" evidence does not establish Alyeska's fraud on the court,[2] and there is nothing in the record suggesting that the evidence was of such a nature that it could not have been discovered at an earlier date through the exercise of due diligence. *See, e.g.*, AK.R.C.P. 60(b)(2).

We have examined each of appellant's arguments and find them to be without merit. The judgment of the superior court is, therefore, AFFIRMED.[3]

ORDER

Pursuant to Appellate Rules 508(e) and (f)(1), attorney fees of $750.00 are awarded to appellee and the appellee shall serve and file with this court an itemized and verified cost bill by 11-21-88. Entered by direction of the Court. Dated 11-9-88.

FOOTNOTES:

1. The so-called "smoking gun" is a letter from Alyeska's attorney to the arbitrator in the initial case. *See infra* note 2.

2. The document relied upon by Lafferty is a letter written to the arbitrator by Alyeska's attorney prior to arbitration specifically *opposing* Lafferty's request to withdraw from arbitration those issues concerning the propriety of Alyeska's search procedures. Alyeska's attorney took the alternative positions that (1) the request to withdraw was "inapposite" because the language of the grievance submitted to the arbitrator did not appear to place the search procedures at issue, and (2) such search procedures are, in any case, subject to arbitration under the Trans-Alaska Pipeline System Agreement. It does not seem patently fraudulent for a subsequent Alyeska attorney to conclude, after reviewing the arbitrator's final decision, that the arbitrator had accepted the second argument rather than the first, and opted to consider the propriety of the search procedures in rendering his decision.

3. Subsequent to oral argument, Lafferty brought a motion to postpone the decision on appeal. Lafferty asserted that he needed time to obtain the assistance of counsel. The motion was denied.

THE SUPREME COURT OF THE STATE OF ALASKA

RICHARD LAFFERTY, *Appellant*,	SUPERIOR COURT NO. 3AN 87-6352 CIVIL
v.	SUPREME COURT NO. S-2403
ALYESKA PIPELINE SERVICE COMPANY, et al., *Appellees*.	

ORDER

On consideration of the petition for rehearing, filed on November 18, 1988,

IT IS ORDERED:

The petition for rehearing is denied.

Entered by direction of the court at Anchorage, Alaska on November 30, 1988.

DAVID A. LAMPEN
Clerk of the Supreme Court

Supreme Court, U.S.
FILED
MAR 30 1989
JOSEPH F. SPANIOL, JR.
CLERK

(2)

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF ALASKA

RESPONDENTS' BRIEF IN OPPOSITION

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Counsel for Respondents

23 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the Alaska Supreme Court's affirmance of the superior court's dismissal of Mr. Lafferty's complaint involve the determination of a federal question or an important interest necessitating review by this Court?

2. Did the Alaska Supreme Court's affirmance of the superior court's dismissal of Mr. Lafferty's complaint deprive Lafferty of due process of law under the Fourteenth Amendment to the United States Constitution?

3. Did the Alaska Supreme Court's affirmance of the superior court's dismissal of Mr. Lafferty's complaint deny Lafferty equal protection of the law under the Fourteenth Amendment to the United States Constitution?

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No. 88-1419

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OPINION BELOW

The Alaska Supreme Court's decision that is the subject of the petition for writ of *certiorari* is an unreported memorandum opinion and judgment that is appended to Mr. Lafferty's petition for writ of *certiorari* at A1-A3.

JURISDICTION

The jurisdiction of this Court over writs of *certiorari* is found at 28 U.S.C. §1257 (3).

STATEMENT OF THE CASE

The procedural posture of this case at once demonstrates the absence of any federal question or special or important reasons necessitating review by this Court on a writ of *certiorari*. This case simply presents a straightforward application by the Alaska Supreme Court of Rule 12(b) (6) of the Alaska Rules of Civil Procedure and Rule 508 of the Alaska Rules of Appellate Procedure.

The course of proceedings leading to this petition was succinctly stated in the memorandum opinion and judgment of the Alaska Supreme Court, No. 429 (November 9, 1988). Respondents, Alyeska Pipeline Service Company, Fluor Alaska, Inc. and Nana Securities[1] (hereinafter collectively referred to as "Alyeska") incorporate liberally therefrom in this statement of the case.

Mr. Lafferty is on his second petition to this Court from his third appeal to the Alaska Supreme Court on the same issue. Originally, Mr. Lafferty filed a claim on May 6, 1977, against Alyeska alleging invasion of privacy, trespass to chattels, false imprisonment and defamation. The Superior Court for the State of Alaska granted Alyeska's summary judgment motion on all counts and dismissed Mr. Lafferty's claim with prejudice. Mr. Lafferty did not appeal the judgment.

On September 7, 1979, approximately seventeen months later, Mr. Lafferty moved to set aside the summary judgment pursuant to Alaska Rule of Civil Procedure 60(b). Mr. Lafferty alleged that counsel for Alyeska had committed a fraud upon the court. The superior court denied Mr. Lafferty's Rule 60(b) motion in July, 1982 and Mr. Lafferty appealed to the Alaska

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[1] The listing of parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates of each corporation, as required by Rule 21.1(b) and 28.1 of the Supreme Court of the United States, is contained in Appendix B to this Brief in Opposition.

Supreme Court. The Alaska Supreme Court affirmed that decision in *Lafferty v. Alyeska Pipeline Service Company,* memorandum opinion and judgment, No. 32 (Alaska, June 15, 1983). Mr. Lafferty's petition for writ of certiorari to the U.S. Supreme Court was subsequently denied. 467 U.S. 1205 (1983).

In June 1984, Mr. Lafferty again sued Alyeska, this time in the United States District Court for Alaska, alleging essentially the same causes of action. The district court dismissed Mr. Lafferty's claim on the grounds of res judicata. The Ninth Circuit Court of Appeals affirmed without opinion. 787 F. 2d 597 (9th Cir. 1986).

Mr. Lafferty then filed a new action in the Superior Court for the State of Alaska, alleging again the same causes of action as his first two suits. The superior court dismissed Mr. Lafferty's complaint on the grounds of res judicata and the statute of limitations. Mr. Lafferty again appealed to the Alaska Supreme Court and, on April 29, 1987, the Alaska Supreme Court affirmed the superior court's dismissal of Mr. Lafferty's claims. *Lafferty v. Alyeska Pipeline Service Company,* memorandum opinion and judgment, No. 337 (Alaska, April 29, 1987).

On June 30, 1987, Mr. Lafferty filed a new complaint in state court deeming it an independent action. The new complaint raised the same issues and sought the same relief as the earlier filings, i.e., vacation of the 1978 judgment because of an alleged fraud upon the court. Mr. Lafferty asserted that this claim was based upon newly-discovered evidence constituting the "smoking gun" as to the fraud claim.

Alyeska moved to dismiss the action under Rule 12(b) (6) of the Alaska Rules of Civil Procedure based upon res judicata, asserting that the complaint was duplicative of those previously filed and dismissed on prior occasions. Mr. Lafferty did not oppose this motion and, on August 26, 1987, the superior court granted the motion and dismissed Mr. Lafferty's complaint with prejudice.

Mr. Lafferty appealed to the Alaska Supreme Court, alleging that it was error for the trial court to dismiss his complaint under Civil Rule 12(b) (6). Mr. Lafferty claimed that the Alaska

Rules of Civil Procedure prohibited him from filing an opposition to Alyeska's motion to dismiss. The Alaska Supreme Court affirmed the superior court's dismissal of Mr. Lafferty's complaint, finding that the dismissal was on the merits. The court reasoned that the dismissal was based upon the defense of res judicata rather than the failure to oppose the Civil Rule 12(b) (6) motion, as argued by Lafferty. The court further determined that the newly-discovered evidence did not establish that Alyeska had committed a fraud upon the court and that there was nothing in the record suggesting that the evidence was of such a nature that it could not have been discovered at an earlier date through the exercise of due diligence. *Lafferty v. Alyeska Pipeline Service Company,* memorandum opinion and judgment, No. 429 (Alaska, Nov. 9, 1988). A petition for rehearing before the Alaska Supreme Court was denied on November 30, 1988.

As is readily apparent, the Alaska Supreme Court did not pass on any federal question nor are there any special or important reasons to justify this Court reviewing the Alaska Supreme Court's judgment on a writ of *certiorari.*

REASONS FOR DENYING THE WRIT

The decision of the Alaska Supreme Court, which is the subject of this petition for writ of *certiorari*, involved the interpretation and application of the Alaska Rules of Civil and Appellate Procedure and did not involve a determination of a federal question nor does it involve any special or important reasons necessitating review by this Court.

Mr. Lafferty's first question to the Court asserts a denial of due process. Mr. Lafferty alleges that Rule 12(b) (6) of the Alaska Rules of Civil Procedure prohibits him from filing an opposition to a motion to dismiss filed under the rule. Mr. Lafferty argues that since he was prohibited from opposing Alyeska's motion to dismiss under Rule 12(b) (6), the dismissal of his case by the trial court was without notice and without opportunity to be heard.

The Alaska Rules of Civil Procedure do not prohibit Mr. Lafferty from opposing a motion to dismiss under Rule 12(b) (6). Rule 77 provides general guidelines concerning motions filed in civil actions. Rule 77(c) provides that each party, after service of a motion to dismiss upon him, has fifteen days in which to file an opposition to the motion. Rule 77(d) provides that either party may request oral argument on the motion. Mr. Lafferty neglected to file an opposition to Alyeska's motion to dismiss, and he did not request oral argument on the motion.

Further, on appeal, the Alaska Supreme Court determined that Mr. Lafferty's failure to oppose Alyeska's motion was not the basis upon which the complaint was dismissed by the trial court. The Alaska Supreme Court has recognized that dismissal should not be ordered simply because one party or the other has failed to technically comply with the rules of civil procedure. In *Shooshanian v. Wagner*, 672 P. 2d 455 (Alaska, 1983), the Alaska Supreme Court determined that motions to dismiss under Rule 12(b) (6) will be analyzed using the same test applied by federal courts in reviewing motions under Federal Rules of Civil Procedure 12(b) (6). The court adopted the test that a complaint would not be dismissed "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which entitle him to relief." 672 P. 2d at 461, *citing*,

Conley v. Gibson, 355 U.S. 41, 45-6 (1957).

The Alaska Supreme Court, implicitly relying on the above test, determined that Mr. Lafferty's complaint was dismissed not because he neglected to file an opposition or request oral argument under Rule 77, but because there was a complete defense to his claim. The court found that Mr. Lafferty's complaint was the same as his prior complaints and was properly dismissed on the grounds of res judicata. Further, the court determined that Mr. Lafferty's alleged "smoking gun" evidence did not establish Alyeska's fraud on the court, and in any event, the record did not suggest that the evidence was of such a nature that it could not have been discovered at an earlier date through the exercise of due diligence.

Mr. Lafferty was given an opportunity to respond to Alyeska's motion to dismiss and failed to exercise his option to respond. Further, the complaint was dismissed, not on the technical failure of Mr. Lafferty to oppose Alyeska's motion, but on the fact that Mr. Lafferty had previously litigated the claim in 1978. Mr. Lafferty's due process rights were not violated.

Mr. Lafferty's second question to this Court asserts a denial of his right to equal protection of the law under the Fourteenth Amendment to the U.S. Constitution. Mr. Lafferty presents a laundry list of alleged violations, only one of which raises the slightest basis for an equal protection claim. The only potential equal protection claim is the assertion that there is an institutional hostility to *pro se* litigants in the Alaska court system. While Mr. Lafferty makes this assertion, the sole evidence offered in support of this claim is the fact that he is a *pro se* litigant and ultimately lost his case. Such evidence does not support the allegation that *pro se* litigants in the Alaska court system are being deprived of the equal protection of the law.

In his third and final question to this Court, Mr. Lafferty again asserts a denial of due process, this time based upon the attorney's fees which have been assessed against him in the course of previous proceedings and the attorney's fees that were assessed against him by the Alaska Supreme Court on his most recent appeal. Mr. Lafferty argues that since he sought to recover over $5,000.00 in attorney's fees paid to Alyeska

during previous litigation, and because the complaint was dismissed without notice, or hearing, or opportunity to defend, that property was taken from him without due process. As previously discussed, Mr. Lafferty was not denied his due process rights. He was given the opportunity to oppose Alyeska's motion to dismiss, he neglected to file an opposition to the motion as permitted by Rule 77, and regardless of this neglect, the complaint was dismissed on the basis that he had previously litigated the issues contained in the complaint.

Mr. Lafferty's assertion of denial of due process because of the award of attorney's fees against him on his most recent appeal to the Alaska Supreme Court is also misplaced. In affirming the decision of the trial court, the Alaska Supreme Court assessed attorney's fees against Mr. Lafferty pursuant to Alaska Appellate Rules 508(e) and (f) (1). Pursuant to Appellate Rule 508(f) (2), any party aggrieved by the award of attorney's fees under Rule 508 may file a motion for reconsideration of the award. Mr. Lafferty neglected to request reconsideration of the attorney's fee award. When an opportunity to be heard is granted to a complainant, and is not exercised, that complainant cannot later plead a denial of due process. *United Nuclear Corp. v. General Atomic Co.*, 629 P. 2d 231 (New Mexico, 1980), *appeal dismissed*, 451 U.S. 901 (1981).

Mr. Lafferty has failed to sustain his burden under Supreme Court Rule 17 of establishing that there are special or important reasons for granting his petition. The questions presented by Mr. Lafferty do not involve substantial federal questions, but rather the application of state rules of civil and appellate procedure. The Alaska Supreme Court has not decided any federal question in conflict with decisions of another state, federal courts of appeal, or this Court and has not decided an important question of federal law that needs to be settled by this Court. Accordingly, the issuance of a writ of *certiorari* to review the Alaska Supreme Court's decision is not justified under 28 U.S.C. §1257(3).

CONCLUSION

For all the foregoing reasons, Mr. Lafferty's petition for writ of *certiorari* to review the judgment of the Alaska Supreme Court should be denied.

Respectfully submitted,

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Counsel for Respondents

APPENDIX A

Respondents provide pertinent portions of statutes and rules of procedure pursuant to Rule 34 of the Supreme Court of the United States:

FEDERAL STATUTES

28 U.S.C. §1257(3)

Final judgments and decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

ALASKA RULES OF CIVIL PROCEDURE

Rule 12. Defenses and Objections

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or

fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Rule 77. Motions

(c) Each party opposing the motion or other application shall, within 10 days after service of the motion or other application upon him, unless otherwise ordered by the court, or otherwise stipulated to by the parties with court approval, either:

(1) Serve and file legible copies of all photographs, affidavits and other documentary evidence upon which the party intends to rely; and

(2) Serve and file a brief, complete written statement of the reasons in opposition to the motion, which shall include an adequate answering brief of points and authorities; and

(3) Serve and file an appropriate order for the court's signature in the event that the motion is denied; or

(4) Serve and file a written statement that he will not oppose the motion.

In cases of motions to dismiss, motions for summary judgment and motions for judgment on the pleadings, the time otherwise specified herein is 15 days.

(d) If either party desires oral argument on the motion, that party shall file a notice of hearing within five days after service of a responsive pleading or the time limit for filing such a responsive pleading, whichever is earlier. The notice of hearing shall include a certificate by counsel that he or she has attempted to resolve the matter with opposing counsel and that in his or her opinion oral argument is necessary. Such conferral with opposing counsel by mail or telephone is sufficient. The hearing date shall be set not less than 7 nor more than 14 days from the date of filing of the notice of hearing. In cases of

motions to dismiss, motions for summary judgment and motions for judgment on the pleadings, the hearing date shall be set not less than 10 days and not more than 20 days from the date of filing of the notice of hearing.

ALASKA RULES OF APPELLATE PROCEDURE

Rule 508. Costs

(e) Attorney's Fees. Attorney's fees may be allowed in an amount to be determined by the court. If such an allowance is made, the clerk shall issue an appropriate order awarding fees at the same time that an opinion or an order under Rule 214 is filed. If the court determines that an appeal or cross-appeal is frivolous or that it has been brought simply for purposes of delay, actual attorney's fees may be awarded to the appellee or cross-appellee.

(f) Procedure.

(1) At the time an opinion or an order under Rule 214 is filed, the clerk shall notify the party or parties entitled to recover costs under subsections (b) and (c) of this rule. That party or parties shall serve and file an itemized and verified bill of costs within 10 days after the date of notice of the opinion or order. Date of notice is defined in Civil Rule 58.1(c). The bill of costs shall be limited to the items specified in subsection (d) of this rule. Failure to file a timely bill of costs is a waiver of the right to recover costs. Objections to the bill of costs may be filed within 7 days after service of the bill.

(2) Promptly after expiration of the time for filing objections, the clerk shall issue an itemized award of costs. A party aggrieved by the clerk's action in awarding costs under subsection (f)(1) of this rule or attorney's fees under subsection (e) of this rule may file a motion for reconsideration of the clerk's award, which motion will be determined by an individual justice or judge. A hearing on the bill of costs shall not be held unless requested by the clerk. The clerk may not delegate to a deputy clerk the authority to award costs in cases in which objection is filed, except with the approval of the chief justice. Return of the record shall not be delayed pending the award of costs.

APPENDIX B

Respondents which are corporations furnish the following pursuant to Rules 21.1(b) and 28.1 of the Supreme Court of the United States:

1. **ALYESKA PIPELINE SERVICE COMPANY**

Alyeska Pipeline Service Company is wholly owned by:

Amerada Hess Pipeline Corporation
ARCO Pipe Line Company
BP Pipelines (Alaska) Inc.
Exxon Pipeline Company
Mobil Alaska Pipeline Company
Phillips Alaska Pipeline Corporation
Unocal Pipeline Company

Amerada Hess Pipeline Corporation is wholly owned by Amerada Hess Corporation;

ARCO Pipe Line Company is wholly owned by Atlantic Richfield Company;

BP Pipelines (Alaska) Inc. is wholly owned by The Standard Oil Company (an Ohio corporation), which is wholly owned by BP America Inc., which is owned by BP International Ltd., BP Minerals Development Ltd. and Seltrust Engineering Ltd., which are wholly owned by The British Petroleum Company p.l.c.;

Exxon Pipeline Company is wholly owned by Exxon Capital Corporation, which is wholly owned by Exxon Capital Holdings Corporation, which is wholly owned by Exxon Corporation;

Mobil Alaska Pipeline Company is wholly owned by Mobil Oil Corporation, which is wholly owned by Mobil Corporation;

Phillips Alaska Pipeline Corporation is wholly owned by Phillips Investment Company, which is wholly owned by Phillips Petroleum Company;

Unocal Pipeline Company is wholly owned by Union Oil Company of California, which is wholly owned by Unocal Corporation.

2. **FLUOR ALASKA, INC.**

American Equipment Company, Inc.
Apex Coal Company
Coral Drilling, C.A.
Daniel International Corporation
Applied Engineering Company
Bond Transmission and Controls, Inc.
Daniel Construction Company, Inc.
Daniel Construction Company International
Daniel Export Services, Inc.
Daniel International, S.A.
Daniel International (Canada) Ltd.
Daniel International (Malaysia) Sdn. Bhd.
Daniel International (Saudi Arabia) Ltd.
Daniel/McCarthy Limited
Daniel/McCarthy International Limited
Daniel, V.I., Inc.
Davcon Limited
International Maintenance Organization (Canada) Ltd.
Daniel Engineering, Inc.
Daniel Navarra, S.A.
Davcon Corporation of Texas
Delcon Corporation
Dincon Corporation
DMIS, Inc.
Fabrication Services, Inc.
Fluor Daniel Facility Services Corporation (2)
Fluor Daniel Services Corporation (3)
Materiales y Equipos Auxiliares para la Construccion, S.A.
Total Recruiting Services, Inc.
FD Services, Inc.
Fluor Abadan Limited
Fluor Atlantic Limited
Fluor Constructors International, Inc.
Fluor Constructors, Inc.
Fluor Constructors Indonesia, Inc.
Fluor Constructors, Ltd.

Fluor Constructors (South East Asia), Ltd.
Fluor Management and Technical Services, Inc.
Fluor Continental Limited
Fluor Daniel, Inc. (4)
Fluor A & E Services, Inc.
Fluor Belgium, N.V.
Fluor Chile, Inc.
Fluor Chile Ingenieria y Constructores S.A.
Fluor China, Inc.
Fluor China Services, Inc.
Fluor China Technology, Inc.
Fluor Colombia Limited
Fluor Cyprus Limited
Fluor Daniel Australia Pty. Limited
Civil and Mechanical Maintenance Pty. Ltd.
Green Square Investments Pty. Limited
Pilbara Industries Pty. Ltd.
Robbins Plant Services Pty. Ltd.
Fluor Daniel B.V.
Ingenieursbureau Marcon (Marine Consultants) B.V.
Fluor Daniel Canada Inc.
Fluor Daniel Caribbean, Inc.
Fluor-Daniel Engineers & Constructors, Ltd.
Project Administrative Services, Ltd.
Fluor Daniel GmbH
Fluor Daniel International Limited
Fluor Daniel Limited
Fluor Norge A/S
Fluor Ocean Services Limited
Stanhope Management Services Limited
Technical Resource Services Limited (5)
Fluor Daniel (Malaysia) Sdn. Bhd.
Fluor-Daniel P.R.C., Ltd.
Fluor Daniel Pacific, Inc.
Fluor Daniel Technical Services, Inc.
Fluor-Doris, Inc.
Fluor Eastern, Inc.
Fluor Ecuador Limited

Fluor Egypt
Fluor Engineering Corporation
Fluor Eurasia, Inc.
Fluor Arabia Limited
Fluor Europe, Inc.
Fluor Hong Kong Limited (6)
Fluor Indonesia, Inc.
P.T. Panca Perintis Indonesia
Fluor International, Inc.
Fluor International Limited
Fluor Iran
Fluor Italia S.r.l.
Fluor-Korea Corporation, Ltd. (The)
Fluor Latin America, Inc.
Fluor Mining & Metals, Ltd.
Fluor New Zealand Limited
Fluor Ocean Services International, Inc.
Fluor Plant Services International, Inc.
Fluor Plant Services International Ltd.
Fluor International Nigeria Limited
Fluor Power Services International, Inc.
Fluor Services, Inc.
Fluor Technical Services Limited
Fluor Technology, Inc.
Fluor Daniel Alaska, Inc.
Fluor Inspection Services, Inc.
Fluor Transportation and Infrastructure, Inc.
Intellus Corporation
Fluor Texas, Inc.
Fluor Venezuela, S.A.
Fluorven Limited
Ranhill-Fluor Sdn. Bhd.
Wes Pro Services, Inc.
Whidbey Services Co.
Fluor Daniel Venture Group, Inc.
Fluor Carson, Inc.
Fluor Cellular Communications Systems, Inc.
Fluor Gulf Communications, Inc.
Fluor Resource Recovery of Massachusetts, Inc.

Fluor Resource Recovery of Massachusetts Limited Partnership (partnership)
Gulf Fibercom, Inc.
Micogen Inc.
Micogen Limited I, Inc.
Micogen Limited II, Inc.
Fluor Distribution Companies, Inc.
Fluor Finance N.V.
Fluor Illinois, Inc.
Fluor Intercontinental, Inc.
Fluor Mideast Limited
Fluor New York Engineers P.C.
Fluor Oil and Gas Corporation
Coquina Petroleum Inc.
Fluor Washington, Inc.
FRES, Inc.
Middle East Fluor
St. Joe Minerals Corporation
Allegheny Coal Corporation
Massey Coal Company (partnership)
A.T. Massey Coal Company, Inc.
Allburn Coal Company, Inc.
Ben Creek Coal Company
Big Bear Mining Company
Black Knight Mine Development Co.
Blackberry Creek Coal Company
Capstan Mining Company
Central West Virginia Energy Company
Cline & Chambers Coal Company, Inc.
Dehue Coal Company
Douglas Pocahontas Coal Corporation
East River Coal Company, Inc.
Elk Run Coal Company, Inc.
Bishop Mine Development Co.
Black Castle Mine Development Co.
Black King Mine Development Co.
Chess Processing Company
Knight Mine Development Co.
Federal Development Corporation

Hopkins Creek Coal Company
IMEC, Inc.
La Belle Processing Company
Leslie Coal Company, Inc.
Lewco Development Company
Lone Pine Land & Development Company, Inc.
Martin County Coal Corporation
Massey Coal Sales Company, Inc.
Massey Coal Services, Inc.
Massey Fuels Corporation
Menefee Land Company, Inc.
Nicco Corporation
Omar Mining Company
Sidney Coal Company, Inc.
Peerless Eagle Coal Co.
Pennsylvania Mine Services, Inc.
  Mine Maintenance, Inc.
Piney Creek Coal Company
Rawl Sales & Processing Co.
  Crystal Alma Corporation
Road Fork Development Company, Inc.
Robinson-Phillips Coal Company
Rockridge Coal Company
Royalty Smokeless Coal Company
Rum Creek Coal Sales, Inc.
Russell Fork Coal Company
S C Coal Corporation
  Devon Coal Associates (partnership)
  Reitz Corporation
  S C Ventures, Inc.
    Elton Coal Company (partnership)
Shannon-Pocahontas Coal Corporation
Sprouse Creek Processing Company
Sycamore Mining Co.
  Alpine Development Company
  Big Bottom Coal Company, Inc.
  Bluesprings Coal Company
  Bonnie Coal Company, Inc.

P. M. Charles Coal Co.
Joboner Coal Company
Lobata Coal Company
Maxann Coal Corp.
Pikco Mining Company
Pond Creek Mining Co.
Rocky Hollow Coal Co.
Tall Timber Coal Company
T.C.H. Coal Company
Sun Coal Company, Inc.
Tennessee Consolidated Coal Company
Chestnut Coal Company, Inc.
Walnut Coal Company, Inc.
Town Creek Coal Company
Tug Valley Land Company, Inc.
Vesta Mining Company
Virginia Crews Coal Company
Blueco Sales & Processing Co.
Pocahontas Red Ash Mining Company
Rose Branch Development Company
West Fork Fuel Company
Wyomac Coal Company, Inc.
M & B Coal Company (partnership)
Doe Run Company, The (partnership)
Energy Research Corporation
ERC Batteries Ltd.
Pea Ridge Iron Ore Company, Inc.
St. Joe American Corporation
St. Joe Carbon Fuels Corporation
St. Joe Coal Corporation
St. Joe International Holding Corporation
Compania Minera San Jose del Peru S.A.
Robil International Corporation
Robil Participacoes e Empreendimentos Ltda.
Mineracao Sao Jose Ltda.
Comercial de Minerios do Sul do Para Ltda.
Mineracao Alabastro Ltda.
Mineracao Alpina Ltda.
Mineracao Catavento Ltda.

Mineracao Centauro Ltda.
Mineracao Ciranda Ltda.
Mineracao Sao Bernardo Ltda.
Mineracao Sao Felix Ltda.
Mineracao Sao Francisco de Assis Ltda.
Mineracao Sao Mateus Ltda.
Mineracao Verde Vale Ltda.
Mineral Resource Development Corporation
St. Joe Development, Inc.
St. Joe Erzbergbaugesellschaft m.b.H.
St. Joe Esperanza Inc.
St. Joe Exploracion Minera Inc.
St. Joe Exploraction Minera Inc. y Cia., S.R.C. (Partnership)
St. Joe Exploration Inc.
St. Joe Explorations GmbH
St. Joe International Corporation
Compania Minera Aguilar S.A.
Pachon S.A. Minera
Sulfacid S.A.C.I. y F.
St. Joe International Corporation (U.K.)
St. Joe International Overseas Inc.
St. Joe Luisito de Oro Inc.
St. Joe Luisito de Oro Inc. y Cia., S.R.C. (Partnership)
St. Joe Minera de Espana, S.A.
St. Joe South Pacific Pty. Limited
St. Joe Bonaparte Pty. Limited
St. Joe Transaccion Inc.
St. Joe Transaccion Inc. y Cia. S.R.C. (Partnership)
St. Joe International Petroleum Corporation
St. Joe Petroleum Corporation
St. Joe Egypt Exploration Corporation
St. Joe Petroleum Egypt Corporation
St. Joe Petroleum-Holland, Inc.
St. Joe Petroleum (Netherlands) Corporation
St. Joe Petroleum (Papu New Guinea) Corporation

St. Joe Petroleum (U.K.) Corporation
St. Joe Magnesium Corporation
St. Joe Management Services, Inc.
St. Joe Technical Services, Inc.
WODECO Nigeria Limited
Western Offshore Drilling & Exploration Company Sdn. Bhd.
Zenith Coal Company, Inc.

3. **NANA SECURITIES**

NANA Securities was a division of NANA Development Corporation, Inc. which is a wholly owned subsidiary of NANA Regional Corporation. NANA Development Corporation, Inc. also has the following divisions:

i) NUL-LUK-VIK Hotel
ii) Drift Inn
iii) NANA Seafoods
iv) Qunqnik
v) Jade Mountain Products
vi) Kivalina Housing
vii) Selawik Fuel
viii) Ambler Fuel
ix) Buckland Fuel
x) Deering Fuel

NANA Development Corporation, Inc. has the following wholly owned subsidiaries:

i) NANA Oilfield Services, Inc.
ii) Purcell Services, Ltd.
iii) Prudhoe East Warehousing Services, Inc.

NANA Oilfield Services, Inc. has the following wholly owned subsidiaries:

i) Arctic Utilities, Inc.
ii) Great Northern Express, Inc.

NANA Development Corporation, Inc. is involved in the following Joint Ventures:

i) NANA/MARRIOTT
ii) SOLVIK
iii) UNE
iv) NORCON/PEWS
v) NANA/Coats Diamond Drilling

NANA Development Corporation, Inc. has a substantial interest in the following:

i) United Bank Alaska
ii) Alaska United Drilling
iii) Westward Well Services Company, Inc.
iv) COMINCO